

RECEIVED

2015 OCT 30 PM 3:00

Original Title Page  
OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

Crowley/Zim Space Charter Agreement

A Space Charter Agreement

FMC Agreement No.

**012369**

Expiration Date: None

This Agreement has not been published previously



LEGAL\2456287\1\1

44.  
U.6

TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page</u>
1	Name of the Agreement	1
2	Purpose of the Agreement	1
3	Parties to the Agreement	1
4	Geographic Scope of the Agreement	1
5	Agreement Authority	2
6	Administration and Delegation of Authority	5
7	Membership and Withdrawal	6
8	Voting	7
9	Duration and Termination	7
10	Governing Law and Arbitration	7
11	Non-Assignment	9
12	Miscellaneous	9
13	Notices	10

ARTICLE 1: NAME OF THE AGREEMENT

The full name of this Agreement is the Crowley/Zim Space Charter Agreement ("Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize Crowley to charter space on its vessels in the Trade (as hereinafter defined) to Zim and to authorize the parties to engage in certain other coordinated activities in connection with the chartering of such space.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "party" or "parties") are:

1. Crowley Caribbean Services, LLC ("Crowley")  
9487 Regency Square Blvd.  
Jacksonville, FL 32225
2. Zim Integrated Shipping Services, Ltd. ("Zim")  
9 Andrei Sakharov Street  
"Matam" - Scientific Industries Center  
P.O.B. 1723  
Haifa, 31016 Israel

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement shall cover the trade from Kingston, Jamaica to Port Everglades, FL and vice-versa (the "Trade"). It is understood and agreed that Zim may use space provided to it under this Agreement to transport cargoes

originating in or destined to non-U.S. countries outside the Trade that it transports via Jamaica.

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Vessels and Schedule.

(a) Crowley shall be responsible for the operation of its vessels (including the cost thereof) and shall maintain the vessels in the highest class of the classification society for vessels of such type during the term of this Agreement. From the date of entry into force of the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS ("ISPS Code"), Crowley shall procure that it and its vessels comply with the applicable requirements of the ISPS Code.

(b) Crowley shall provide Zim with service schedules, including the vessels and ports of call, on a regular basis and shall advise as early as possible of any amendments thereto. Crowley shall be entitled to exercise the liberty to deviate at any time without prior notice to Zim in accordance with the US COGSA.

5.2 Chartering and Use of Space.

(a) Crowley is authorized to charter to Zim and Zim is authorized to purchase from Crowley, on such terms and conditions (including slot charter hire) as the parties may agree, up to 200 TEUs per round voyage in the Trade. Additional space may be chartered on any given voyage by mutual agreement of the parties, subject to space availability, the payment of additional slot charter hire, and non-interference with vessel operations. Zim shall pay only for

those slots it utilizes. Zim shall be entitled to use up to 50 reefer points per round voyage. The maximum average GWT per voyage of each TEU slot shall not exceed 14 tons in each direction. Zim containers loaded on Crowley vessels shall not exceed the allocated number of slots and maximum weight. In the event Zim containers exceed the allocated slots/weight, they shall be regarded as occupying additional slots.

(b) This Agreement covers containerized cargo moving in 20-ft. and 40-ft. ISO containers. Other containers may be accepted on a case-by-case basis with the prior written consent of Crowley. Crowley may refuse to carry any container not in compliance with ISO standards, or which is not in a seaworthy and cargoworthy condition or is not otherwise in compliance with applicable legal requirements.

(c) Zim may not use space chartered to it hereunder to carry any third-party containers without the prior written consent of Crowley, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Zim may carry containers of commercially linked or affiliated companies.

(d) Crowley shall be entitled to use any slot/weight allocation unused by Zim on any voyage leg, provided that Zim's full slot/weight allocation is available to it at the next port at which it is entitled to load cargo.

(e) In the event Crowley is unable to provide space for containers properly booked by Zim within the space allotted to Zim hereunder for reasons not within its control, Crowley (at its option) shall either refund the slot charter hire for such containers to Zim or load said containers on the next

voyage/vessel on a priority basis and in addition to Zim's normal allocation on such voyage/vessel. The remedies provided in this Article 5.2(e) shall constitute the exclusive remedy and maximum compensation to Zim for any failure by Crowley to provide space.

5.3 Zim shall be responsible for all costs of the handling of and operations relating to its containers/cargo, and shall arrange to be invoiced directly by the terminal operators in accordance with its own agreement with said terminal operators. In the absence of an agreement between Zim and any terminal operator, Zim shall be invoiced by and pay Crowley for such handling/operations.

5.4 Except as elsewhere specifically provided in this Agreement, neither Party shall be responsible for any indirect or consequential loss, including but not limited to damage or depreciation in the market value of the vessel or goods, loss of hire, income or employment whatsoever in connection to any claim, loss or damage.

5.5 Each of the parties has signed a C-TPAT agreement with U.S. Customs. The parties agree to undertake to assist each other in connection with the relevant portions of the carrier's obligations under the C-TPAT agreement, but always subject to the limitations imposed by the existing level of manning of the vessels.

5.6 The parties shall maintain their separate identities, marketing and sales functions, tariffs, contracts, and shall issue their own bills of lading. Each party may advertise sailings of the vessels subject to this Agreement.

5.7 The parties are authorized to discuss and agree upon such general operational and administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, procedures for allocating space, forecasting, stowage planning, financial procedures and guarantees, record-keeping, compliance with advance notification and other requirements imposed by customs authorities, claims procedures and responsibility for loss or damage, force majeure, insurance, liabilities, indemnification, consequences for delays, general average and salvage, terms of their respective bills of lading, treatment of specialized cargo (i.e., hazardous and dangerous cargoes, live animals, and cargo with unusually high value), stowaways, drugs and contraband, and sharing of administrative costs of the Agreement.

5.8 Pursuant to 46 C.F.R. § 535.407, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement is exempt from filing.

ARTICLE 6: ADMINISTRATION AND DELEGATION OF AUTHORITY

Upon action of the parties, the following are authorized to execute and file this Agreement and any accompanying materials and any subsequent

modifications to this Agreement with the Federal Maritime Commission on behalf of a party:

- (i) Any authorized officer of a party; and
- (ii) Legal counsel for a party.

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

7.1 Membership is limited to the parties hereto, except that additional carriers offering regular service in the Trade may be admitted by unanimous agreement of the parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

7.2 Any party may withdraw from this Agreement for any reason on not less than three (3) months' prior written notice to the other party.

7.3 Notwithstanding Article 7.2, if at any time during the term of this Agreement any party should become bankrupt or declare insolvency, or other steps are taken for the winding up of that party, then the other party may terminate the Agreement with immediate effect. The Agreement also may be terminated at any time by written mutual agreement of the parties.

7.4 Termination of the Agreement shall not relieve the parties of any obligations which they may have incurred hereunder prior to the date of termination. Unless otherwise agreed by the parties, this Agreement shall continue in force to the extent necessary for each vessel to complete cargo operations at the last port of call on the voyage commenced prior to the effective date of termination of the Agreement.



ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the parties.

ARTICLE 9: DURATION AND TERMINATION

9.1 This Agreement shall take effect on the date it becomes effective pursuant to the Shipping Act of 1984, as amended, and shall remain in effect until terminated by mutual agreement or pursuant to Article 7.2.

9.2 The Federal Maritime Commission shall be promptly notified in writing of the termination of this Agreement.

ARTICLE 10: GOVERNING LAW AND ARBITRATION

10.1 This agreement shall be subject to the U.S. Shipping Act of 1984, as amended, and shall otherwise be construed and governed by the laws of the State of New York.

10.2 The parties agree that any and all disputes arising out of or in connection with the agreement shall be resolved by arbitration. Arbitration shall take place in New York, New York, or such other place as the parties to the dispute may mutually agree. The arbitration shall be before a single arbitrator to be appointed by agreement of the parties to the dispute. If the parties fail to agree on a single arbitrator within twenty (20) days of the date of forwarding of a written demand for arbitration, then either party may immediately file an application with the President of the Society of Maritime Arbitrators Inc.,

("SMA") in New-York, NY and request that a single arbitrator be appointed within 20 days of that application. Failure of the President of the SMA to timely appoint a single arbitrator shall not defeat the arbitration process. There shall be no restrictions on the nationality of the arbitrator nor must the arbitrator be a member of the SMA. The arbitration shall be conducted in accordance with SMA rules, and the parties expressly agree that the costs and expenses of the arbitration (including reasonable attorneys' fees and costs) shall be born by the non-prevailing party or as the arbitrator shall otherwise determine. The decision of the arbitrator shall be final, binding, and not subject to further review than otherwise allowed under the federal arbitration act.

10.3 Should the dispute involve monetary damages less than US\$ 75,000.00, the parties agree that the arbitration proceeding shall be conducted in accordance with the SMA rules for shortened procedure.

10.4 The parties agree to make best efforts to engage in mediation before demanding arbitration of any and all disputes. If mediation is employed in respect to any and all disputes, the parties have agreed to adopt the current SMA rules for mediation. The mediator need not be a member of the SMA.

10.5 The decision of the arbitrator may be enforced by any court, tribunal or other forum as may properly assert jurisdiction. In the event a party that has prevailed in arbitration finds it necessary to seek enforcement of the arbitrator's decision and award, the party seeking such enforcement shall be entitled to receive from the non-prevailing party the costs and expenses of such enforcement, including reasonable attorney's fees and costs. The parties further

agree that any such award may be enforced pursuant to the United Nations Convention of the recognition and enforcement of foreign arbitral awards of June 10, 1958.

10.6 Notwithstanding the above, in case of Zim handling a lawsuit in any jurisdiction by or against any third party with respect to cargo damages or otherwise, Zim shall be entitled to join Seafreight as third party or as defendant to such proceedings and Seafreight shall voluntarily submit to such jurisdiction.

ARTICLE 11: NON-ASSIGNMENT

Neither party shall assign its rights or delegate its duties under this Agreement to any other person or entity without the prior written consent of the other party.

ARTICLE 12: MISCELLANEOUS

12.1 This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

12.2 In the event any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of the Agreement shall continue in force and effect unless the parties would not have entered into the Agreement without that provision which may be proven to be illegal or unenforceable.

ARTICLE 13: NOTICES

All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and sent by letter, telex or other written means as may be agreed, and addressed to the other party at the address set forth in Article 3 hereof. Any such legal process, notice or other formal communications shall be deemed to have reached the person to whom they are addressed 72 hours after posting or when dispatched.

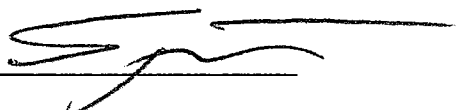
Crowley/Zim Space Charter Agreement  
FMC Agreement No. **012369**

Signature Page

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of this 27 day of October, 2015.

CROWLEY CARIBBEAN SERVICES, LLC

ZIM INTEGRATED SHIPPING  
SERVICES, LTD.

By: 

By: \_\_\_\_\_

Name: Tony Otero

Name:

Title: Vice President  
Crowley Caribbean Services, LLC

Title:

Crowley/Zim Space Charter Agreement  
FMC Agreement No. 012369

Signature Page

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of this 31<sup>st</sup> day of October, 2015.

CROWLEY CARIBBEAN SERVICES, LLC

ZIM INTEGRATED SHIPPING  
SERVICES, LTD.

By: \_\_\_\_\_

By: Y. Yakar

Name:

Name: Yosi Yakar  
**Yosi Yakar**  
Global Procurement Manager

Title:

Title: ZIM Integrated Shipping Services Ltd

By: Uri Granot

Name: Uri Granot

Title: Feeder Service Category Manager

**Uri Granot**  
Feeder Services Category Manager  
Global Procurement Directorate  
Zim Integrated Shipping Services Ltd

LEGAL\2456287\1\1